

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO
FLORIDA RULE OF APPELLEATE
PROCEDURE 9.130

NO: SC21-129

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**Florida Justice Association Comment
on Amendment to Rule 9.130**

The Florida Justice Association (FJA) is a voluntary statewide association of more than 3,000 members, which consists of victims, victim advocates, consumers, and trial lawyers concentrating on litigation in all areas of the law. The members of the FJA are dedicated to strengthening and upholding Florida's civil justice system and protecting the rights of Florida's citizens and consumers. The members of the FJA firmly believe that every person should have fair access to the courts and that the constitutional right to a civil jury trial should not be eroded.

The FJA submits this comment in opposition to the adoption of the proposed amendment to Rule 9.130 (Proceedings to Review nonfinal Orders and Specific Court Orders). The proposed rule change would authorize appeal of nonfinal orders which grant or deny a motion for leave to amend a complaint to assert a claim for punitive damages.

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The generally recognized purpose of Rule 9.130 is to promote the efficient allocation of Florida's limited judicial resources and to protect litigants from specific, and limited, irreparable harm that would result from a departure from the law. We oppose the amendment to the rule as we believe it will lead to longer delays in cases, there is not an existing problem needing to be resolved, and it will unnecessarily burden the appellate courts.

First, Certiorari is a fair and efficient remedy, which promotes a faster resolution of cases. The current system works effectively, allowing cases to move expeditiously toward resolution in the trial court, with most cases concluding before an appeal becomes necessary. By requiring a showing by evidence in the record or evidence to be proffered, a hearing before the court, and leave of court before a claim for punitive damages can be asserted, Fla. R. Civ. P. 1.190(f) and 768.72 Fla. Stat. already provide efficient judicial review of such claim at the trial court level. The proposed rule change will lead to more appeals, more costs for litigants, and more delays at the trial court level.

Second, we believe the proposed rule change is a solution for which there is no problem. During its January 2021 meeting, and

by a vote of 25-9, the Florida Bar Appellate Court Rules Committee (“Committee”) approved the recommendation of the civil practice sub-committee stating that it would not have supported an amendment to the rule absent the Court directing it to do so. The Committee has reviewed similar issues on two prior occasions, and on each of those occasions has “consistently and overwhelmingly voted to exclude these orders from the list of nonfinal appealable orders in 9.130.”¹ In this instance, the majority position of the sub-committee, and adopted by the Committee, is but-for the directive of the court, the majority of the Committee would not support adding orders granting or denying leave to amend a complaint to add a claim for punitive damages to rule 9.130. The Committee further states that it “felt constrained to approve the amendment ... because the Court directed the Committee to propose an amendment as opposed to merely requesting the Committee to consider the issue.”²

In *Life Care Centers of America Inc. v. Croft*, the 2nd DCA suggested “that the Florida Bar’s Appellate Court Rules Committee consider amending 9.130 to allow the immediate appeal from a non-

¹ Report of the Appellate Court Rules Committee, at Appendix G-15

² Id. at p. 4

final order granting leave to amend a pleading to add a claim for punitive damages.” Life Care Centers of America Inc. v. Croft, 299 So. 3d 588 (Fla. DCA 2nd 2020). As evidenced in the *Report of the Appellate Court Rules Committee* filed in this matter, the Committee has taken the matter under consideration on multiple occasions, and has determined each time that change to the rule is not warranted.

Third, the proposed rule change would impose an additional burden on an already overloaded court system. Such a change would lead to substantially more appeals and delays in nearly every case in which punitive damages are sought. If the proposed rule change is adopted, it is reasonably foreseeable that the unsuccessful party in each case in which there is a motion for leave to amend to add a punitive damages claim will appeal the trial court’s ruling as a matter of course. Because such rulings typically come after discovery has been completed, cases will essentially stall while the appeal runs its course. The proposed amendment would not only delay resolution to these cases, but also substantially increasing the time and cost of litigation for all parties involved.

Lastly, as it pertains to the discovery of financial information and a right to privacy, at least one federal court in Florida has held that a court may determine that financial discovery is premature before the punitive damages claim is tested on a motion for summary judgment. See Frinskney v. Am. Park & Pay, Inc., 2005 U.S. Dist. Lexis 50901 (S.D. Fla. 2005)(“...a plaintiff is entitled to conduct financial worth discovery if, for example, his claim for punitive damages survives either a motion to dismiss or a motion for summary judgment.) Thus, making a distinction between the granting or deny a motion for leave to amend to add a claim for punitive damages and the timing of financial discovery. Furthermore, there is nothing precluding a defendant from seeking a confidentiality order on the production of financial discovery, similar to when there are trade secrets at issue.

For the reasons stated, we respectfully ask that the proposed amendment not be adopted by the Court. In the event the court does amend the rule, we believe the amendment should be bilateral, in that making the decision granting or denying the leave to amend immediately appealable. To hold otherwise would be inequitable.

CERTIFICATE OF SERVICE

Pursuant to Fla. R. Jud. Admin. 2.140(b)(6) and 2.140(d), I hereby certify that a true and correct copy of the foregoing comment has been served on the chair of the Florida Bar's Civil Procedure Rules Committee and Florida Bar staff liaison.

This 30th day of April 2021.

Florida Justice Association, Inc.

/s/ William T. Cotterall
William T. Cotterall, Esq.
Florida Bar No.: 574651
wcotterall@myfja.org
218 S. Monroe Street
Tallahassee, FL 32301
Telephone: (850) 524-9403